

Message Text

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73

ACTION OPIC-12

INFO OCT-01 ARA-16 ISO-00 AID-20 CIAE-00 COME-00 EB-11

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FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 6493

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EO 11652: N/A

TAGS: EFIN, CI

SUBJ: DECLARATION ON FIRMS TAKEN BY ALLENDE GOVERNMENT

PASS OPIC

REF: SANTIAGO A-205; STATE 219076

1. LOCAL OPIC COUNSEL ADVISED THAT IF WAIVER OF CLAIMS FOR DAMAGES AGAINST STATE WERE NOT RPT NOT IN AGREEMENT GOVERNING RETURN OF FIRMS TO PRIVATE CONTROL, COMPANIES COULD MAKE CLAIMS AGAINST GOC UNDER LOCAL LAW. CLAIMS COULD BE MADE ON BASES OF PHYSICAL DAMAGE (DANO EMERGENTE) AND/OR LOSS OF EARNINGS (LUCRO CESANTE). LOCAL LAW DOES NOT SET NORMS FOR MEASURE OF DAMAGES.

2. ACCORDING TO OPIC COUNSEL, AS PRACTICAL MATTER, REJECTION OF WAIVER WOULD PROBABLY RESULT IN GOC REFUSAL TO RETURN FIRM, SINCE GOC FIRMLY CONVINCED THAT IT DOING ITS SHARE BY RETURNING FIRM, A POSSIBILITY THAT DID NOT EXIST UNDER ALLENDE GOVERNMENT EVEN THOUGH MECHANISM OF REQUISITION, INTERVENTION, ETC. WAS MEANT TO BE APPLIED ONLY ON TEMPORARY, SHORT-TERM BASIS. AS QUID PRO QUO, GOC

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EXPECTS FIRMS TO WAIVE DAMAGE CLAIMS AGAINST STATE AS ITS

CONTRIBUTION TO RENOVATE CHILE.

3. CONTINUING BACKGROUND ADVICE, LOCAL COUNSEL SAID ANY DAMAGE CLAIM PURSUED WOULD LIKELY BE LONG, FRUSTRATING PROCESS AT BEST. HISTORY OF LITIGATION EVEN REGARDING PHYSICAL DAMAGE BASED ON TECHNICAL EVALUATION INDICATES FEW COMMONLY ACCEPTED NORMS OF JUDGEMENT IN CHILEAN COURTS. AS EXAMPLE, COUNSEL CITED CASE WHEN LOWER COURT AWARDED CLAIM TO PLAINTIFF BASED ON TECHNICAL APPRAISAL OF MERCHANDISE AND SUPREME COURT REDUCED AWARD BY 90 PERCENT. COUNSEL ALSO POINTED OUT EXTREME DIFFICULTY OF ESTABLISHING LOSS OF EARNINGS AS RESULT OF INTERVENTION DUE TO FACT THAT ALLENDE GOVERNMENT POLICIES HAD DISTORTED ENTIRE ECONOMY, LEAVING LITTLE IF ANYTHING ON WHICH TO ESTABLISH CLAIM OF WHAT MIGHT HAVE BEEN "NORMAL" IF FIRM HAD NOT BEEN INTERVENED.
THOMPSON

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